



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,155	11/03/2003	Massimiliano Antonio Poletto	RIV-0550	5551
87555 7590 08/19/2009 Riverbed Technology Inc. - PVF c/o Park, Vaughan & Fleming LLP 2820 Fifth Street Davis, CA 95618				
EXAMINER				
BARQADLE, YASIN M				
ART UNIT		PAPER NUMBER		
2456				
MAIL DATE		DELIVERY MODE		
08/19/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/701,155

Applicant(s)

POLETTI ET AL.

Examiner

YASIN M. BARQADLE

Art Unit

2456

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 18, 2008 has been entered.

Response to Amendment

2. The amendment filed on September 18, 2008 has been fully considered but are not deemed persuasive.

Response to Arguments

Applicant's arguments regarding the 101 rejection is not persuasive. A memory for storing a data structure for tracking network behavior, comprising: a connection table containing a record that stores information about traffic to or from the node and between that node and others nodes in the network fits a data structure with mere arrangements of data in a table. Therefore it is a non-statutory subject matter.

Applicant's remarks regarding the 101 rejection continues to be unpersuasive. For example, the footnote at the bottom of page 8 states "when functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases" The Examiner notes that data structure stored in a table as claimed by the Applicant is considered as non-functional descriptive material. Additionally, the claim recites a "memory story data structure..." not "some computer-readable medium" as indicated in the footnote.

Applicant's arguments regarding the double patenting rejection are not persuasive. The Examiner maintains that claims 1 and 14 of Copending Application **10/701154** and Claims 1, 19 and 25 of Copending Application **10/701356** contain every element of claim 1 of the instant application and as such anticipate(s) claim 1 of the instant application. Therefore, the narrower claims of the co-pending invention anticipate the broader claims of the instant application. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed.

Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). “ ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

Arguments regarding the 102/103 rejections, in essence the Applicant argues that “The claimed “record feature” embodied in the memory o f claim 1 is not suggested by any of the passages referred to by the examiner or else where in Tams.”, and that Tams “... does not provide any mechanism to map each node of a network to a record object that stores information ... to or from the node and between that node and other nodes in the network.” (Page 11 second paragraph and page 12).

Examiner respectfully disagrees. In addition to Tams’ Table 2 and ¶ 0210 which show a connection table that maps nodes (identified by an IP addresses such as 123.45.67.89 and host object/or destination IP address 98.76.54.32) and record indicating number of packets in the conversation between the hosts, Tams shows in figure 9 a table containing “Two conversations were detected during this first hourly time period. A first conversation between devices A and B which involved 10 packets and a second conversation between devices A and E which involved 6 packets. The number of bytes, in addition to

the number of packets, may also be stored in each record of the database 707.” (Para. 210). (The conversation between host A and host B and/or host E shows record containing number of packets between the hosts such 10 and 6).

Applicant also argues that “Tams’s data is organized by byte/packet count... rather than organize records by host or host-pair” page 12 second paragraph. The Examiner disagrees. Tams for example teaches “The entries in alMatrix and nlMatrix tables are ordered by address and protocols.” (¶0021). Therefore, contrary to Applicant’s argument Tam’s data is also ordered by addresses in addition to byte/packet count and protocols.

Regarding claim 5, the Applicant argues that Tams “Table 2 does not show records indexed by source address or by destination address.” (Page 14). Tams teaches ordering traffic data by addresses including source and/or destination (¶0021 and ¶0178).

As to indexing by time, Tams clearly shows time stamp traffic information indicating the conversation between hosts that is stored in a database by different time interval. See ¶0198 and ¶0201-0208 and the time scale data structure 709,711,713 and 715 in fig. 7.

Regarding claim 13, the Applicant argues Tams does not disclose records that store a measure of "...connections that occurred between hosts..." The Examiner disagrees. Tams show fig. 7 and figure 9 where records that stores a measure of "...connections that occurred between hosts..." is shown.

The Applicant also argues "Maufer does not teach "the addresses indexing the connection include a physical layer address to IP address map that is used to determine Host ID." Page 16. The Examiner notes that Maufer discloses a physical [layer] address to IP address map that is used to determine Host ID (col. 16, line 51-65 and table 300, fig. 5A. See also col. 5, lines 36-60).

The Applicant continues to argue that "Maufer clearly does not teach any mapping for use in a connection table of the type in claim 1 for a function to determine Host ID in the connection table. The Examiner disagrees. It seems the Applicant is arguing against the references individually. The feature of the connection table is addressed by Tams while Maufer is used to teach a physical [layer] address to IP address map that is used to determine Host ID (col. 16, line 51-65 and table 300, fig. 5A. See also col. 5, lines 36-60).

Regarding claim 12 and the features of two level mapping, after further examination, the Examiner believes that figure 9 and 10 address the argued limitations in claim 12. For example Tams teaches "Two conversations were

detected during this first hourly time period. A first conversation between devices A and B which involved 10 packets and a second conversation between devices A and E which involved 6 packets. The number of bytes, in addition to the number of packets, may also be stored in each record of the database 707.” (Para. 210).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 1 is rejected under 35 U.S.C. 101 because it is directed to a data structure (“A memory for storing a data structure for tracking network behavior, comprising: a connection table ...” When nonfunctional descriptive material is recorded on some memory, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored in a memory, does not make it statutory.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of copending Application No. 10701154 and claims 1-36 of copending Application No. 10701356. Although the conflicting claims are not identical, they are not patentably distinct from each other a comparison between instant application independent claim 1 and the claims 1 and 14 (of the copending application number 10701154) and claims 1, 19, and 25 (of the copending application number 10701356) reveal the copending claims are simply species of the broader claim 1 of the instant application. Hence, claim 1 of the instant application is generic to the species of the invention covered by independent claims of the copending applications stated above. Thus, the broad generic invention is anticipated by the narrower species of the co-pending invention, thus without a terminal disclaimer, the species claims preclude issuance of the generic application. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

Instant Application 10/701155	Copending Application 10/701154	Copending Application 10/701356
Claim 1: A memory device storing a data structure for tracking network behavior,	Claims 1: <u>A system</u> , comprising: <u>a plurality of collector</u>	Claims 1: A device comprising:

1	record that stores information about traffic to or from the node 1 and 14	1, 19 and 25
2	8 and 17	5
3	9 and 18	6
4	10 and 19	7
5	11 and 20	8
6	12 and 21	9 and 30
7 and 8	13 and 22	10 and 31

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology

Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-9 and 11-17-23 and 25-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Tams et al U.S. Publication Number (20030069952), hereinafter "Tams".

As per claim 1, Tams (20030069952) teaches a memory device (fig. 2, 162 and fig. 9) storing a data structure for tracking network behavior (§ 0079-0081 and ¶0198), comprising:

a connection table (fig. 2, data table and Table 2, page 11. See also fig. 9) that maps each node of a network (host A-host B) to a record that stores information about traffic to or from the node and between that node and others nodes in the network (number of packets in fig. 9 for example) (§ 0157-0164 and ¶0210. See TABLE 2, page 11).

As per claims 2 and 3, Tams teaches wherein the connection table includes a plurality of records that are indexed by source and destination address (See TABLE 2, page 11 and 0021 and ¶0178).

As per claim 4, Tams teaches the device of claim 1 wherein the connection table includes a plurality of records that are indexed by time (§0198 and §0201-0206; see steps in fig. 8).

As per claim 4, Tams teaches the device of claim 1 wherein the connection table includes a plurality of records that are indexed by time (§0198 and §0201-0206; see steps in fig. 8).

As per claim 5, Tams teaches the device of claim 1 wherein the connection table includes a plurality of records, that are record objects, which are indexed by source address, destination address and time (See TABLE 2, page 11 and §0198 and §0201-0206. See also fig. 9 §0201 and §0178).

As per claim 6, Tams teaches the device of claim 1 wherein the connection table is a plurality of connection sub-tables each sub-table having data pertaining to network traffic over different time scales (§0198 and §0201-0208; see the time scale data structure (709,711,713 and 715 in fig. 7).

As per claim 7, Tams teaches the device of claim 6 wherein the connection sub-tables include a time-slice connection table that operates on a small unit of time and at least one other sub-table that operates on a larger unit of time than the time slice sub-table. (§0198 and §0201-0208; see the time scale data

structure (709,711,713 and 715 in fig. 7).

As per claim 8, Tams teaches the device of claim 7 wherein the at one sub-table holds records received from all collectors over the time scale of the table (¶0198 and ¶0212).

As per claim 9, Tams teaches the device of claim 5 wherein the addresses indexing the connection table are IP addresses (See TABLE 2, page 11).

As per claim 11, Tams teaches the device of claim 1 wherein the host record of a first host maps that first host (host A, figure 9) to a second host (host B and host C) which communicates with the first host to a "host pair record" that has information about all the traffic from between the first and second hosts (Fig. 9 and 10; ¶0201 and ¶0209-0210).

As per claim 12, Tams shows a connection table includes a two level mapping that enables a consuming device to obtain summary information about one host for a first level mapping and about the traffic between any pair of hosts in either direction, between a first one of the hosts of any pair to a second one of the hosts of the any pair and from the second one of the host of the any pair to the first one of the host for the any pair for a second level mapping (figure 9-10 and ¶0201-0209).

As per claim 13, Tams teaches the device of claim 1 wherein a record the connection table comprises a plurality of host record, a host record stores a measure of the number of bytes, packets, and connections that occurred between hosts during a given time-period (§ 0157-0164 and ¶0210. See TABLE 2 and figures 9 and 10).

As per claim 14, Tams teaches wherein data in the record is organized by well known transport protocols and well-known application-level protocols (§ 0151-0157 and ¶0161-168. See TABLE 2 and TABLE 4A-4B and figures 9-10).

As per claim 15, Tams teaches the device of claim 13 wherein host records have no specific memory limit (§0202-0206).

As per claim 16, Tams teaches the device of claim 1 wherein for application-level protocols and for every pair of hosts, the connection table stores statistics for traffic between the hosts (§ 0151-0157 and ¶0161-168. See TABLE 2 and TABLE 4A and 4C in page 11).

As per claim 17, Tams teaches the device of claim 16 wherein the connection table stores protocol-specific records as (protocol, count) key-value pairs (§ 0151-0157 and ¶0161-168. See TABLE 2 and TABLE 4A-4B in page 11).

As per claim 18, Tams teaches a memory device storing a data structure for tracking network behavior (fig. 7, 707), the data structure comprising:

a connection table (table 2 and fig. 9, 920) that maps each node of a network to a record that stores connection information about traffic to or from the node and between that node and others nodes (host A-host B or Host A-host E (fig. 9) that have connections with the node in the network (¶02090, the connection table indexed according to at least a first one of source address, destination address and time (¶0021 and ¶0178); the connection table further including in the records fields for storing statistical information for traffic between the hosts (packet counts in table 2 or fig. 9).

As per claim 19, Tams teaches the device of claim 1 wherein the plurality of records are record objects (See TABLE 2, page 11 and ¶ 0198 and ¶ 0201-0206. See also fig. 9 ¶ 0201 and ¶ 0178).

As per claim 20, Tams teaches the device of claim 18 wherein the connection table is a second plurality of connection sub-tables, each sub-table having data pertaining to network traffic over different ones of corresponding second plurality of time scales (fig. 7, 207 and figures 9-10).

As per claim 21, Tams teaches the device of claim 18 wherein the connection sub-tables include a time-slice connection table that operates on a small unit

of time and at least one other sub-table that operates on a larger unit of time than the time slice sub-table (See fig. 7 and fig. 9).

As per claim 22, Tams teaches the device of claim 18 wherein the at one sub-table holds records received from all collectors in the network over the time scale of the table (See fig. 7 and fig. 9).

As per claim 23, Tams teaches the device of claim 18 wherein the addresses indexing the connection table are IP addresses (¶0021 and ¶0178).

As per claims 25-27, these claims correspond to claims 11-14, therefore they are rejected with the same rational.

As per claims 29-30, these claims correspond to claims 16-17, therefore they are rejected with the same rational.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tams et al U.S. Publication Number (20030069952), hereinafter “Tams” in view of Maufer et al U.S. Patent Number (7120930), hereinafter “Maufer”. As per claims 10 and 24, although Tams shows substantial features of the claimed invention including a table with plurality of records, he does not explicitly show a physical [layer] address to IP address map that is used to determine Host ID.

Nonetheless, this feature is well known in the art and would have been an obvious modification of the system disclosed by Tams, as evidenced by Maufer U.S. Patent Number (7120930).

In analogous art, Maufer whose invention is about a Method and apparatus for enhanced security for communication over a network including a mapping table accessible by a gateway computer used to form associations between a local address for the client and a destination address for a peer and a Security Parameters Index associated with IPSec-protected traffic from the peer (abstract), discloses a physical [layer] address to IP address map that is used to determine Host ID (col. 16, line 51-65 and table 300, fig. 5A. See also col. 5, lines 36-60).

Giving the teaching of Maufer, a person of ordinary skill in the art would have readily recognized the advantage of modifying Tams by employing the enhanced network security system of Maufer for particularly identifying traffic flowing from a remote address to the local address using physical layer (MAC) address to IP address mapping in order to verify hosts belonging to the private network from unknown intruders of the public network. In this way fake packets belonging to unknown sources are recognized and discarded.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yasin Barqadle whose telephone number is 571-272-3947. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Yasin M Barqadle/

Primary Examiner, Art Unit 2456